July 23, 1998

D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-H

Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

APPEARANCES: Bruce P. Beausejour, Esq.
185 Franklin Street, Room 1403
Boston, MA 02107

-and-

Robert N. Werlin, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110

FOR: NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY D/B/A BELL ATLANTIC-MASSACHUSETTS
Petitioner

Keith J. Roland, Esq.
Roland, Fogel, Koblenz & Carr, LLP
1 Columbia Place
Albany, NY 12207

-and-

Paul Kouroupas, Esq.
David Hirsch, Esq.
Regulatory Affairs
1133 21st Street, N.W., Suite 400
2 Lafayette Centre
Washington, DC 20036
FOR: TELEPORT COMMUNICATIONS GROUP, INC.
Petitioner

Todd J. Stein, Esq.
2855 Oak Industrial Drive
Grand Rapids, MI 49506-1277
FOR: BROOKS FIBER COMMUNICATIONS OF MASSACHUSETTS, INC.
Petitioner

Jeffrey F. Jones, Esq.
Jay E. Gruber, Esq.
Laurie S. Gill, Esq.
Palmer & Dodge
One Beacon Street
Boston, MA 02108

-and-

Michael J. Morrissey, Esq.
Eleanor R. Olarsch, Esq.
32 Avenue of the Americas
Room 2700
New York, NY 10013
FOR: AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
Petitioner

Alan Mandl, Esq.
Ottenberg, Dunkless, Mandl & Mandl
260 Franklin Street
Boston, MA 02110

-and-

Hope Barbulescu, Esq.
One International Drive
Rye Brook, NY 10573
FOR: MCI TELECOMMUNICATIONS CORPORATION
Petitioner

Cathy Thurston, Esq.
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036
FOR: SPRINT COMMUNICATIONS COMPANY, L.P.
Petitioner

L. Scott Harshbarger, Attorney General
By: Daniel Mitchell
Assistant Attorney General
Public Protection Bureau
Regulated Industries Division
200 Portland Street, 4th Floor
Boston, MA 02114
Intervenor

ORDER ON MOTION FOR RECONSIDERATION AND EXTENSION OF THE APPEAL PERIOD OF MCI TELECOMMUNICATIONS CORPORATION

I. INTRODUCTION

On June 11, 1998, the Department of Telecommunications and Energy ("Department") issued an order in this consolidated arbitration case which set forth our rulings on the issue of pricing collocation services under the Telecommunications Act of 1996 ("Act"). Consolidated Arbitration, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-G ("Phase 4-G Order"). On July 1, 1998, MCI Telecommunications Corporation ("MCI") filed with the Department a Motion for Reconsideration ("Motion"), stating that the Phase 4-G Order contains several errors and inconsistencies that should be corrected. On July 9, 1998, New England Telephone and Telegraph Company d/b/a Bell Atlantic ("Bell Atlantic") filed comments in opposition to MCI's Motion (Bell Atlantic Comments). MCI's Motion also requested a seven day extension of the time for filing an appeal from the final decision in this matter.

II. MOTION FOR RECONSIDERATION

A. STANDARD OF REVIEW

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and

deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

B. POSITIONS OF THE PARTIES

MCI argues that the Department erred in its Phase 4-G Order by erroneously treating the NYNEX performance incentive as a direct labor cost; by failing to consider and adopt MCI's specific adjustments to Bell Atlantic's nonrecurring cage costs; by failing to consider and adopt MCI's specific adjustment to Bell Atlantic's contractor proposal cage costs; by mischaracterizing MCI's position on power costs by confusing it with a position taken solely by AT&T

Communications of New England ("AT&T"); by failing to apply an efficiency factor to Bell Atlantic's claimed power costs; and by failing to adopt the power cost installation factor recommended by MCI (MCI Motion at 2-3).

Bell Atlantic opposes the Motion on the grounds that MCI is attempting to reargue issues considered and decided in the main case (Bell Atlantic Comments at 2). Bell Atlantic contends that each of MCI's grounds for reconsideration is without merit and fails to show any of the factors necessary to establish a claim for reconsideration, and that MCI's Motion should therefore be denied (id.).

C. ANALYSIS AND FINDINGS

In reaching our findings in the Phase 4-G Order, the Department considered the same arguments MCI makes in the Motion. MCI does not identify any extraordinary circumstances that require us to take a fresh look at the record in this case. MCI has not brought to light previously unknown or undisclosed facts, nor does it identify errors that rise to the level of mistake or inadvertence. Specifically, we fully considered MCI's arguments on the issues of the NYNEX performance incentive, nonrecurring costs, contractors costs, and power costs. Where appropriate, we made adjustments to Bell Atlantic's proposed cost study to reflect the concerns raised by MCI. Our adjustments to the cost study may not have been the specific adjustments proposed by MCI, but they reflect the appropriate adjustments given the record in the case. MCI's Motion simply reargues issues decided in the main case.

With respect to the issue of power costs, MCI argued that Bell Atlantic's "proposal must be rejected on burden of proof grounds" (MCI Brief at 21) and joined with AT&T in claiming that

"these same power costs are already being recovered from other rates and charges previously established" by Bell Atlantic (id. at 19; see also MCI Reply Brief at 5). MCI also joined with AT&T in its methodological dispute with Bell Atlantic, stating that Bell Atlantic's power costs "have not been justified under TELRIC principles" (MCI Brief at 19). We recognize that MCI also went beyond these points to make specific proposals with regard to the calculation of power costs, but we read from the record evidence and MCI's arguments that its primary recommendation to us was rejection of Bell Atlantic's power cost charge. Hence, we characterized its position and that of AT&T as a "wish that the collocation equipment . . . be freed of any associated power charge." Phase 4-G Order at 20. Our characterization does not misconstrue MCI's arguments; our treatment of this issue was not the result of mistake or inadvertence. In any event, that characterization is less central to a final outcome than is our determination that "the Bell Atlantic method is sound." Id.

Therefore, because no new issues have been brought to light, no extraordinary circumstances have been identified, no unknown or undisclosed facts have been revealed, and no mistake or inadvertence has been shown that would have a significant impact upon our decision, MCI's Motion for Reconsideration is denied.

III. MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD

A. STANDARD OF REVIEW

G.L. c. 25, § 5, provides in pertinent part that an appeal of a Department final order must be filed with the Department no later than 20 days after service of the order "or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty

days after the date of service of said ... decision or ruling." See also 220 C.M.R. § 1.11(11).

The twenty-day appeal deadline indicates a clear intention on the part of the legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department be made expeditiously. Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders Nunnally, D.P.U. 92-34-A at 4 (1993).

The Department's procedural rules state that reasonable extensions of the appeal period shall be granted upon a showing of good cause. 220 C.M.R. § 1.11(11). In regards to determining what constitutes good cause, the Department has stated:

> Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Boston Edison Company, D.P.U. 90-355-A at 4 (1992).

B. POSITIONS OF THE PARTIES

In requesting an extension of time within which to appeal of seven days after the issuance of this Order, MCI contended that more time was necessary to: (1) allow the Department adequate time to reconsider the Phase 4-G Order; (2) allow MCI time to properly review the compliance filing made by Bell Atlantic in accordance with the Phase 4-G Order; and (3) allow parties an opportunity to appeal the final decision after the issuance of this Order (Motion at 9).

Bell Atlantic argues that the Department should deny MCI's request where MCI has ignored the Department's standards for reconsideration and simply reargued issues decided in the

main case (Bell Atlantic Comments at 10-11). Bell Atlantic also notes that under the Act, the state agency action that gives rise to possible appellate review is the determination made in conjunction with approval of an interconnection agreement or statement of generally available terms (id. at 11, n.4).

C. ANALYSIS AND FINDINGS

MCI requests additional time to file an appeal of the Department's final Order on collocation pricing until after the Department issues its Order on MCI's Motion. However, the time for MCI to appeal a decision of the Department on an arbitrated issue is after the decision has been incorporated into an interconnection agreement, and the Department issues an Order approving or rejecting the interconnection agreement. See 47 U.S.C. § 252(e)(6) (party aggrieved by state commission determination may bring action in federal district court to determine whether the agreement ... meets the requirements of sections 251 and 252). As of the date of this Order, MCI and Bell Atlantic have not filed an final interconnection agreement between them, and the Department has not issued an Order approving or rejecting the agreement.[1] MCI's Motion for Extension of the Judicial Appeal Period is not ripe and is therefore denied.

[1] On June 17, 1998, Bell Atlantic and MCI filed with the Department their respective versions of an interconnection agreement between them. The Department is currently reviewing both versions and will soon advise the parties of the language to include in a final version of the agreement, then to be submitted to the Department for review under § 252(e) of the Act.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Reconsideration of MCI Telecommunications Corporation, filed with the Department on July 1, 1998, be and is hereby DENIED; and it is

FURTHER ORDERED: That the Motion for Extension of the Judicial Appeal Period of MCI Telecommunications Corporation, filed with the Department on July 1, 1998, be and is hereby DENIED.

By Order of the Department,

_____
Janet Gail Besser, Chair

_____
James Connelly, Commissioner

_____
W. Robert Keating, Commissioner

_____
Paul B. Vasington, Commissioner

_____
Eugene Sullivan, Commissioner